

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Digital Audio Broadcasting Systems and Their)	MM Docket No. 99-325
Impact on the Terrestrial Radio Broadcast)	
Service)	

COMMENTS OF THE WALT DISNEY COMPANY AND ABC, INC.

The Walt Disney Company and ABC, Inc., by their attorneys, hereby submit comments in the above-captioned proceeding (“Comments”). These Comments address several of the issues raised in the further notice of proposed rulemaking and notice of inquiry (“FNPRM”) released by the Federal Communications Commission (“Commission”) on April 20, 2004.¹

I. Introduction

ABC, Inc. (“ABC”), an indirect subsidiary of The Walt Disney Company, owns, directly or through subsidiaries, over seventy commercial radio broadcast stations in the United States. ABC also is a minority investor in iBiquity Digital Corporation (“iBiquity”). As stated in previous filings in this proceeding, ABC generally supports the in-band, on-channel digital radio system developed by iBiquity (“IBOC System”) as the standard for digital transmission by AM and FM radio stations. In recognition of this support, ABC already is in the process of implementing the IBOC System at seven of its owned stations, and has plans to initiate digital service at some or all of these stations by the end of 2004.

¹ See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, *Further Notice of Proposed Rulemaking and Notice of Inquiry*, MM Docket No. 99-235, FCC 04-99 (rel. Apr. 20, 2004) (“FNPRM”).

Based on this experience, ABC submits the instant Comments, in which it recommends that the Commission:

- (i) clarify that its initial case-by-case AM interference remedies will not prejudice the long-term interests of stations that are ordered to reduce power;
- (ii) issue a blanket authorization for AM IBOC System nighttime operation for stations already authorized to provide nighttime analog service;
- (iii) implement a notice filing procedure to replace its current special temporary authorization (“STA”) procedure for authorizing a separate antenna for FM IBOC System use;
- (iv) maintain its flexible approach to IBOC and refrain from adopting a mandatory conversion deadline at this stage of digital radio development; and
- (v) consider making some of its interim rules permanent in order to encourage IBOC System deployment.

II. The Commission Should Clarify That Its Initial Case-by-Case AM Interference Remedies Will Not Prejudice the Long Term Interests of Stations Ordered to Reduce Power

In its initial IBOC report and order (“Report & Order”), the Commission adopted a flexible, multi-prong approach to resolving AM IBOC System interference disputes.² Pursuant to this approach, one potential solution the Commission may order after receiving an AM IBOC System interference complaint is a 6 dB reduction in the power level of a station’s primary digital subcarriers.³ This power reduction also is the default remedy for alleged interference; specifically, if the Media Bureau does not act on an interference complaint within ninety days, the allegedly interfering station must, as a default, reduce its primary digital subcarrier power

² See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, *Report and Order*, 17 FCC Rcd 19990, 19999-20000 (2002) (“Report & Order”).

³ See FNPRM at ¶ 45.

level by 6 dB.⁴ Although this temporary solution likely will be effective in eliminating the alleged interference, this power reduction approach is not necessarily an appropriate long-term solution. An automatic power reduction, which is not based on a thorough examination of the facts, could have a significant, long-term negative impact on the allegedly interfering station. For example, if one station in a market is subject to an automatic power reduction but the other stations in its market are not similarly restrained, the reduced-power station will be at a competitive disadvantage. Further, a station which must reduce its power—and as a result, its coverage contour—essentially has been downgraded to a lesser facility. Thus, the Commission must ensure that its procedures and their implementation fully protect the interests of stations that initially must reduce their primary digital subcarrier power levels pursuant to the automatic interference complaint procedure detailed above.

In the FNPRM, the Commission acknowledges in a footnote that its “automatic power reduction requirement is without prejudice to any subsequent Bureau action on the pending complaint.”⁵ ABC urges the Commission to further clarify that it will act expeditiously, within another ninety-day period, to address the interference complaint and determine a more permanent resolution of the alleged interference based on an examination of the facts. In the alternative, the Commission at least should clarify that a station that must reduce its power pursuant to an order of the Media Bureau or automatically due to the expiration of the ninety-day processing period may file a request with the Media Bureau to restore its power level. Upon the filing of such a request, the station complaining of interference may respond, and the Media Bureau must issue a decision based on the merits of the stations’ submissions, within ninety-days

⁴ *Id.*

of the filing of the request.⁶ Without any such procedural clarification, it is possible that stations willing to reduce their power as a short-term solution to alleged interference will be handicapped or prejudiced by this power reduction for an unacceptably long period of time, or even permanently.

III. The Commission Should Issue a Blanket Authorization for AM Nighttime IBOC System Operation to Those Stations Already Authorized to Provide Nighttime Analog Service

In the Report & Order, the Commission temporarily limited transmission of IBOC signals by AM stations to daytime hours only, pending further study.⁷ In a recent filing, the National Association of Broadcasters (“NAB”) proposed a blanket authorization that would permit nighttime AM IBOC System operation by those stations with current analog nighttime authorizations.⁸ ABC supports the NAB’s blanket authorization approach because requiring stations to file an application or STA request prior to commencing nighttime IBOC System operation would inject delay and regulatory uncertainty into the process, thus acting as a disincentive to investment, and ultimately postponing the delivery of digital radio service. Moreover, the Commission’s broad authority to quickly order remedies for interference, as detailed above, negates any concerns about AM nighttime interference.

⁵ *Id.* at n.95.

⁶ In addition, the Commission could specify that a station may restore its power automatically if the Media Bureau does not act within this second ninety-day period.

⁷ See Report and Order at 20000; FNPRM at ¶ 8.

⁸ See Letter to Marlene H. Dortch, Secretary, FCC, from Jack N. Goodman, Senior Vice President & General Counsel, NAB (Mar. 5, 2004).

IV. The Commission Should Implement a Notice Filing Procedure to Replace its Current STA Procedure For Authorizing a Separate Antenna for FM IBOC System Use

Under a current Media Bureau procedure, a station that wishes to use a second antenna in addition to its main antenna to support FM IBOC System operation must seek an STA.⁹ Such an STA may be granted only if: (i) the digital transmission uses a licensed auxiliary antenna; (ii) the auxiliary antenna is within three seconds of latitude and longitude of the main antenna; and (iii) the height above average terrain (“HAAT”) of the auxiliary antenna is within seventy to one-hundred percent of the HAAT of the main antenna. In addition, the STA request must identify the date the station plans to commence IBOC System operation. A station also must certify that its facilities conform to the iBiquity hybrid specification.¹⁰

ABC believes that this STA procedure for second antennas unnecessarily may be discouraging implementation of the FM IBOC System because of its inherent uncertainty. Although the Commission has characterized the STA procedure as “routine,”¹¹ a station is in no way guaranteed prompt grant of its STA request. In addition, the current STA procedure requires a station to state the date on which it will commence IBOC service in its STA request. In ABC’s experience, construction and implementation of FM IBOC System facilities can be a technically complicated procedure, the exact details of which are unique to each individual station. Thus, in order to accurately specify a date, a station may need to expend money and take several preliminary steps in IBOC System implementation, all without knowing whether the

⁹ See Use of Separate Antennas to Initiate Digital FM Transmissions Approved, *Public Notice* (rel. Mar. 17, 2004) (“Separate Antenna Notice”).

¹⁰ *Id.*

Commission ultimately will authorize such service. Few stations, especially those licensed to single-station or small group owners, may be willing to invest the time and money required to reach that point unless they know that the Commission will authorize such operation.

In order to encourage expeditious deployment of the FM IBOC System, the Commission should replace the Media Bureau's current STA procedure with a notice filing procedure.¹² Under a notice filing procedure, a station automatically would be authorized to commence FM IBOC System service if it certified in a notice to the Media Bureau that it complied with the above-listed conditions governing antenna location and HAAT and that its facilities conformed to the iBiquity hybrid specification.¹³ Such a procedure would eliminate the regulatory uncertainty and disincentive to deployment discussed above without increasing any potential

¹¹ FNPRM at n.104.

¹² The Media Bureau considered a notice procedure before issuing its public notice but decided that such a procedure would need to be authorized by Commission action. *See* Separate Antenna Notice at 1 ("Although the NAB report recommended expanding the notification procedures currently in place for combined antenna implementation, such operation does not fall within the scope of the notification procedures authorized by the *IBOC Order*, and thus will require separate action by the Commission."). The Commission already has authorized a notification procedure for some types of IBOC system operations. *See* Report & Order at 20005.

¹³ The Commission further could require that the notice identify the exact coordinates of the antenna and the antenna's HAAT and/or other information such as information specified in the *Report & Order* notification procedure. *See* Report & Order at 20005. No certification concerning whether an antenna is an "auxiliary antenna" should be necessary, however, because use of this term is misplaced in this context. An auxiliary antenna is specifically defined in the Commission's rules as an antenna "that is permanently installed and available for use when the main antenna is out of service for repairs or replacement." 47 C.F.R. § 73.175(a)(1). In ABC's experience of implementing the IBOC system, it has learned that FM IBOC System deployment can be completed in less time and for less expense by installing a small, second antenna on a station's existing tower, often below the station's main antenna. However, it is not appropriate to characterize this type of second antenna as an "auxiliary" antenna, as that term is defined in the Commission's rules, because the second IBOC System antenna is not intended to be used when the main antenna is out of service. In order to remedy this potential confusion, the

interference concerns.¹⁴ A notice filing procedure also would aid the Commission in collecting accurate data concerning the pace of IBOC System deployment. The grant of an STA request does not mean that a station has commenced IBOC System operations; however, the filing of a post-operational notice would guarantee that the Commission has an accurate list of what stations have commenced IBOC System operations.

V. At This Stage of Digital Radio Deployment, the Commission Should Maintain its Flexible Approach to Digital Radio and Should Refrain From Adopting a Mandatory Conversion Deadline

In its FNPRM, the Commission seeks comment on whether it should have a flexible policy concerning multicasting and datacasting, given the new opportunities digital radio provides.¹⁵ ABC believes that at this early stage of digital radio deployment, the Commission should maintain its flexible approach and, similarly, should refrain from adopting a mandatory digital conversion deadline. The more the Commission's rules preserve potential additional value in a digital signal, the more likely stations are to implement digital service. Therefore, the Commission should continue to allow stations to explore new datacasting and multicasting opportunities in a flexible manner. Otherwise, ABC fears that the full potential of digital radio may never be realized. Only after stations gain more experience with the deployment of multicasting and datacasting services will the Commission be able to collect useful and insightful comments concerning such services. Once the Commission has more information about the

Commission should clarify that a second antenna used for FM IBOC System operation does not need to be characterized as an auxiliary antenna.

¹⁴ As noted above, the Commission enjoys broad authority to quickly order effective interference remedies.

¹⁵ See FNPRM at 9-12.

multicasting and datacasting business models and the exact types of services being deployed, it may be appropriate for the Commission to consider further action. In the meantime, the Commission should maintain its flexible approach.

For similar reasons, the Commission presently should refrain from imposing any type of mandatory digital conversion deadline. Interference problems remain a valid concern. And, as stated above, ABC has learned that every rollout of IBOC System operations can pose its own distinct set of technical challenges. Ultimately, the Commission should not adopt an arbitrary deadline until stations have gained more experience with the IBOC System and have shared their experiences with the Commission.

VI. The Commission Should Make Some of its Interim IBOC Standards Permanent in Order to Encourage Station Implementation of the IBOC System

In the Report & Order, the Commission established interim standards to permit use of the IBOC System for digital transmissions.¹⁶ Among other restrictions, the Commission further specified that until final rules were adopted, a licensee's authorization to transmit IBOC signals could be modified or cancelled at any time, without notice.¹⁷ In the FNPRM, the Commission seeks comment on rule changes that would encourage more stations to convert to digital transmissions using the IBOC System.¹⁸ ABC submits that making at least some of the Commission's "interim" standards permanent would be a simple and effective way to drive stations towards further voluntary implementation of the IBOC System. Such an approach

¹⁶ See *generally* Report & Order.

¹⁷ See Report & Order at 20006.

¹⁸ FNPRM at ¶¶ 16-17.

would provide much needed regulatory certainty for a service that already faces significant economic uncertainty.

As the Commission is well-aware, regulatory uncertainty can be a significant disincentive to investment. Broadcasters considering voluntary adoption of the IBOC System currently face regulatory uncertainty *and* economic uncertainty. Specifically, a broadcaster contemplating IBOC implementation faces the same basic initial question it faces when considering any other type of improvement—will the benefits outweigh the costs? At least at this point in time, broadcasters see limited initial opportunities for increased revenue from IBOC digital transmission given the lack of consumers who own an IBOC receiver. Thus, the potential economic benefits appear small, especially in the short-term. The fact that the FCC’s current IBOC System standards are temporary makes the likely long-term benefits of IBOC digital transmission appear unclear. The temporary nature of these standards also does not provide any clear guidance to transmitter or receiver manufacturers that they should adapt their products accordingly.

Meanwhile, the costs of establishing IBOC digital transmission service are immediate, real and often significant. As noted by iBiquity, these costs can range from \$30,000 to \$300,000, with an estimated average cost of \$75,000 per station.¹⁹ When facing the prospect of spending money on an improvement with little promise for increased revenue *and* which may be rendered unusable by swift unilateral action of the Commission, it is not surprising that many broadcasters are reluctant to implement IBOC digital transmission service. Making some IBOC standards permanent would encourage stations to construct and implement digital service. Market forces ultimately should and will determine when a station implements IBOC digital transmissions;

however, the Commission can go a long way towards expediting voluntary implementation by making some of its rules permanent.

VII. Conclusion

ABC supports the Commission's further implementation and promotion of the IBOC System. ABC submits that adoption of the suggestions detailed above will ensure that the potential benefits of the IBOC System are fully realized, in a more expeditious manner.

Respectfully submitted,

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¹⁹ FNPRM at ¶ 14 (citing Feb. 19, 2002 comments of iBiquity at 14).